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No. 03-814

IN THE

Supreme Court of the United States

WILLARD STEWART,

Petitioner,

v.

DUTRA CONSTRUCTION CO.,

Respondent.

CORRECTED COPY

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

BRIEF OF DIAMOND OFFSHORE DRILLING, INC., ENSCO INTERNATIONAL INCORPORATED, GLOBALSANTAFE CORPORATION, NOBLE CORPORATION, PRIDE INTERNATIONAL, INC., ROWAN COMPANIES, INC., TRANSOCEAN INC., AND TODCO AND THE INTERNATIONAL ASSOCIATION OF DRILLING CONTRACTORS, AS *AMICI CURIAE* IN SUPPORT OF THE PETITIONER

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Diamond Offshore Drilling, Inc., ENSCO International Incorporated, GlobalSantaFe Corporation, Noble Corporation, Pride International, Inc., Rowan Companies, Inc., Transocean Inc. and TODCO and the International Association of Drilling Contractors, respectfully submit this brief as *amici curiae* in support of the Petitioner, Willard Stewart.

I. IDENTITY AND INTEREST OF AMICUS CURIAE IDENTITY OF AMICUS CURIAE[1]

Diamond Offshore Drilling, Inc., ENSCO International, Inc., GlobalSantaFe Corporation, Noble Corporation, Pride International, Inc., Rowan Companies, Inc., Transocean Inc., and TODCO (referred to jointly as "Drilling Contractors") and the International Association of Drilling Contractors ("IADC") join in filing this brief as *amici curiae*.

Diamond Offshore Drilling, Inc., ENSCO International, Inc., GlobalSantaFe Corporation, Noble Corporation, Pride International, Inc., Rowan Companies, Inc., Transocean Inc., and TODCO are all major deepwater offshore drilling contractors with headquarters or principal executive offices located in either Houston or Dallas. Each operates a large

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1. This amicus Brief was authored by James Patrick Cooney of Royston, Rayzor, Vickery & Williams, L.L.P. No person or entity other than Diamond Offshore Drilling, Inc., ENSCO International Incorporated, GlobalSantaFe Corporation, Noble Corporation, Pride International, Inc., Rowan Companies, Inc., Transocean Inc., and TODCO and the International Association of Drilling Contractors made a monetary contribution to the preparation or submission of the Brief. The above named amici curiae have received and filed concurrently with the filing of this Brief the written consents of the parties.

fleet of mobile offshore drilling rigs in waters off the United States and around the world. Taken collectively, the Drilling Contractors own or operate over 400 mobile offshore drilling units, which easily represents a majority of the units in operation world wide, and employ thousands of individuals to work aboard these units. Details with regard to their operations and the composition of their drilling fleets can be obtained off their respective web sites.[2] All of the Drilling Contractors are members of the IADC.

Since 1940, the IADC has exclusively represented the worldwide oil and gas drilling industry. Its mission is to promote commitment to safety, preservation of the environment, and advances in drilling technology.

From its Houston headquarters, the IADC strives to secure responsible standards, practices, and regulations that provide for safe, efficient, and environmentally sound drilling operations worldwide. The Association educates its members through programs and publications and develops industry training standards. Founded in 1940, the IADC has offices in Washington, D.C., the United Kingdom, the Netherlands, and the Middle East, and has chapters in the United Kingdom, Venezuela, Brazil, Australia, South Central Asia, Southeast Asia, the Middle East, North Africa, and throughout the United States.

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2. Diamond Offshore Drilling, Inc.-www.diamondoffshore.com; ENSCO International, Inc.-www.enscous.com; GlobalSantaFe Corporation-www.gsfdrill.com; Noble Corporation-www.noblecorp.com; Pride International, Inc.-www.prideinternational.com; Rowan Companies, Inc.-www.rowancompanies.com; Transocean, Inc.-www.deepwater.com; and TODCO-www.theoffshoredrillingcompany.com.

IADC membership includes contract drilling and well-servicing firms, oil and gas producers, and manufacturers and suppliers of oilfield equipment and services. The IADC's contract drilling members own most of the world's land and offshore drilling units and drill the vast majority of the world's oil, natural gas, and geothermal wells. The IADC is an independent trade association that has over 500 member companies, predominately drilling contractors. A full list of the IADC's members can be found on its website at http://iadc.org.

The IADC holds "Accredited Observer" status at the International Maritime Organization and the International Seabed Federation, both branches of the United Nations.

The IADC also drafts and publishes model drilling contract forms for use in the oil and gas industry.

The Drilling Contractors and the IADC file this *amicus* brief in support of Petitioner Willard Stewart's petition to reverse the judgment of the United States Court of Appeals for the First Circuit in this matter. This Court's ruling on the legal standard to be used to determine whether a special purpose watercraft, which includes mobile offshore and inshore drilling rigs, will directly affect the offshore drilling contractor members of the Association.

This brief is filed with the consent of the President of the IADC, Dr. Lee Hunt, who has the authority to file *amicus* briefs in appeals that affect or may affect the interests of the IADC, or its members.

II. SUMMARY OF THE ARGUMENT

Mobile offshore drilling units, whether jack-ups, semi-submersibles, drill ships, or simple inland drilling barges, are remarkably similar to the dredge barge which is the focus of the case currently before the Court. Mobile offshore drilling units have three characteristics: (1) they are capable of conducting drilling operations in a marine environment; (2) they are capable of floating and (3) they are mobile, in that they are capable of transporting drilling equipment from well site to well site over water. As a general proposition, mobile offshore drilling units have been held to be Jones Act vessels. However, if a standard comparable to that followed in the First Circuit is adopted, they may no longer qualify as Jones Act vessels, particularly when they are engaged in drilling activities.

Mobile offshore drilling units have been considered Jones Act vessels since the 1959 Fifth Circuit decision in *Offshore Company v. Robison*, 226 F.2d 769 (CA5 1959). This position has been reaffirmed by *Manuel v. P.A.W. Drilling & Well Service, Inc.*, 135 F.3d 344, 1998 AMC 1390 (CA5 1998). As this Court has found it useful to rely on *Robison* in approaching questions of Jones Act status, it may find it useful to rely on similar Fifth Circuit cases addressing the issue of what constitutes a vessel for Jones Act purposes. The focus of the Fifth Circuit cases determining whether a special purpose watercraft is a Jones Act vessel has been the mobility of the watercraft.

The consistent treatment of mobile offshore drilling units as Jones Act vessels has provided a degree of stability and predictability which has allowed for the development of an effective system of risk allocation and claims management.

The adoption of the First Circuit approach would adversely affect this stability and predictability and render the current system of risk allocation and claims management less effective, without bringing with it any discernable benefits.

The conflict among the Circuits as to the standard by which to determine if a special purpose watercraft is a Jones Act vessel should be resolved by fashioning a standard consistent with the definition of a vessel found in 1 U.S.C. § 3 and the developed case law of the Fifth Circuit.

III. ARGUMENT

A. Mobile Offshore Drilling Rigs are Vessels.

The various types of watercraft employed by the offshore drilling industry to conduct drilling operations in the maritime environment (referred to hereafter generically as "mobile offshore drilling units"[3]) are remarkably similar in many respects to the dredge barge involved in the instant case. Mobile offshore drilling units are dual purpose floating structures designed to both transport drilling equipment from one site to another over water and then to serve as a stationary platform from which a drilling operation can be conducted. There are several types of mobile offshore drilling units. Jack-ups are self elevating barges equipped with retractable legs that can be lowered to the ocean floor so that the barge on which the legs are mounted can be "jacked up" on its legs above the level of the water to conduct drilling operations. A jack-up generally is not self propelled and is towed from

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3. *See* 46 CFR Subchapter 1-A, which refers to vessels capable of engaging in drilling operations for the exploration and exploitation of subsea resources as "mobile offshore drilling units."

site to site to conduct drilling operations. A semi-submersible is a barge that may or may not be self-propelled which has pontoons or buoyancy chambers located on short columns below the drilling platform which can be partially submerged to provide stability. They are either anchored in place or maintain their position over the well with dynamically positioning thruster engines. A drill ship is a ship-shaped displacement hull upon which a drilling rig is mounted. It is self propelled and maintains position over a site during drilling operations by use of either anchors or dynamically positioning thrusting engines. In addition to jack-ups, semi-submersibles and drill ships, there are various types of barge mounted drilling rigs used in inland waters, which may be totally submersible, so that the barge rests on the bottom during operations. Alternatively, the barge may be equipped with legs or spuds to insure a stationary position during operations. There are also tender vessels that can be used to support operations conducted from fixed platforms. All such units are documented as vessels and are subject to Coast Guard regulation. 46 CFR Subchapter 1-A. Regardless of the configuration, all mobile offshore drilling units have three characteristics: *first*, they are capable of conducting drilling operations in a marine environment; *second*, they are capable of floating and, *third*, they are mobile, in that they are capable of transporting drilling equipment from well site to well site over water.[4]

As a general proposition, mobile offshore drilling units have been held to be Jones Act vessels so that the maritime workers permanently assigned to them have been afforded

4. Attached as Appendix II are diagrams showing the configuration of a jack up, a semi-submersible and a drill ship

Jones Act seaman status.[5] However, if a standard comparable to that followed by the court below is adopted, it appears that these workers will no longer qualify for Jones Act status, at least for the time the unit to which they are assigned is engaged in drilling operations. The purpose of this *amicus* brief is to call to the attention of the Court the interest of the drilling contractors and the IADC in the outcome of this case and to urge the Court to leave undisturbed the current practice of treating mobile offshore drilling units as Jones Act vessels when they are in transit and when they are engaged in drilling operations.

B. Mobile Offshore Drilling Units Have Consistently Been Considered Vessels for the Purpose of the Jones Act.

At least since 1959, the Fifth Circuit in *Offshore Company v. Robison*, 226 F.2d 769 (CA5 1959), mobile offshore drilling units have been considered "vessels" for the purposes of the Jones Act. The classification of mobile offshore drilling units as Jones Act vessels has recently been reaffirmed by the Fifth Circuit in *Manuel v. P.A.W. Drilling & Well Service, Inc.*; 135 F.3d 344, 1998 AMC 1390 (CA5 1998). Thus, at least within the Fifth Circuit, so long as a workman injured on an offshore drilling unit can show he was assigned permanently to the unit or performed a substantial part of his work on the unit and the duties which he performed contributed to the function of the unit or to the accomplishment of its mission, he can obtain a remedy under the Jones Act and the General Maritime Law.

5. *See generally*, "When is Vessel in Navigation for Purposes of Jones Act," 5 A.L.R. Fed. 674

The approach taken by the Fifth Circuit in *Robison*, a case dealing with a member of a drilling crew injured on a mobile drilling platform, has been relied upon by this Court in its recent decisions clarifying the requirements for Jones Act seaman status. In *McDermott International v. Wilander*, 498 U.S. 337 (1990), this Court addressed the type of *activity* a seaman must perform to qualify as a Jones Act seaman and essentially followed the *Robison* formulation in observing that "the requirement that an employee's duties must 'contribute to the function of the vessel or to the accomplishment of its mission' captures well an important requirement of seaman status," and that "[I]t is not necessary that a seaman aid in navigation or contribute to the transportation of the vessel, but a seaman must be doing the ship's work." *Id.* 335. In *Chandris v. Latsis*, 515 U.S. 357 (1995), the Court dealt with the "relationship a worker must have to a vessel, regardless of the specific tasks the worker undertakes, in order to obtain seaman status," in holding

> that the 'employment-related connection to a vessel in navigation' necessary to qualify as a seaman under the Jones Act . . . comprises two basic elements: the worker's duties must contribute to the function of the vessel or to the accomplishment of its mission, and the worker must have a connection to a vessel in navigation (or an identifiable group of vessels) that is substantial in terms of both its duration and its nature.

Id. 376.

In similar fashion, this Court may find it useful to rely on cases such as *Manuel v. P.A.W. Drilling & Well Service, Inc., supra*; *Fields v. Pool Offshore*, 182 F.3d 353 (CA5 1999), and *Colomb v. Texaco*, 736 F.2d 218 (CA5 1984), in formulating a standard to determine whether a special purpose watercraft is a Jones Act "vessel" that is also consistent with the definition of a vessel contained in 1 U.S.C. § 3.

In *Manuel*, the Fifth Circuit began by "examining the purpose for which the craft is constructed and the business in which it is engaged" (citing *The Robert W. Parsons*, 191 U.S. 17, 30 (1930)). As the Court observed, "in applying this test, two divergent lines of cases have emerged. In one line of cases, we have concluded that special purpose structures such as jack-up rigs, mobile, submersible drilling barges, derrick barges, spud barges and others are vessels as a matter of law, even though they also served, in part as work platforms." *Id.* 347. As the Court explained, the purpose for which such craft were constructed was to transport drilling or similar equipment from place to place across navigable water to drill or service wells located in navigable waters. *Id.* 351.

In *Colomb*, the Fifth Circuit focused on the mobility of an inland, submersible, spud drilling barge to hold that it was a Jones Act vessel as a matter of law.

> The Barge ERIS was constructed for the purpose of going to various drilling locations to drill or work over oil and gas wells. It was engaged in that business at the time of the accident. According to the undisputed testimony, the Barge ERIS was highly mobile, it was routinely floated to a

particular location and submerged; it remained submerged and in a fixed location for short periods while it completed a drilling or workover job. It was then refloated and towed to the next job site. *Id.* 221.

In *Fields v. Pool Offshore Company*, 183 F.3d 353 (CA5 1999), the Fifth Circuit held that a spar anchored above a field of seven well heads by chain wire lines connected to pilings driven into the sea bed and fixed in place by a network of pipe running to the well heads was not a vessel as a matter of law. The court began its analysis with the definition of a vessel as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water" found at 1 U.S.C. § 3 and then focused on the spar's lack of mobility in holding that it could not qualify as a Jones Act vessel.

C. The Consistent Treatment of Mobile Offshore Drilling Units as Jones Act Vessels has Provided a High Degree of Stability and Predictability.

The question of whether a mobile offshore drilling unit is a Jones Act vessel has been largely settled in the Fifth Circuit and this has brought about a significant level of stability and predictability to the handling of personal injury claims brought by employees serving aboard mobile offshore drilling units. The value of this stability and predictability should not be lightly disregarded. The more or less consistent approach to Jones Act status which has developed over the last 34 years since the *Robison* decision has allowed a well ordered personal injury compensation system to evolve in the offshore drilling industry generally. In Texas, Louisiana and Mississippi (all within the Fifth Circuit), where most

offshore drilling operations in American waters take place, there is little or no confusion as to who is a Jones Act seaman and who is not. This has allowed for the development of a reasonably effective system of risk allocation and claims management, which includes the placement of appropriate insurance coverages by drilling contractors and other offshore employers and the contractual allocation of responsibility and risk among the employers, depending on the legal status of workers they employ.

Central to the effectiveness of this system is the high degree of predictability of employee status. Assuming the criteria set out in *Chandris* are met, a rig worker is a Jones Act seaman regardless of whether the mobile offshore drilling unit is in transit or stationary, engaged in drilling operations at a site, or is somewhere in between. Likewise, workers whose attachment to the drilling unit is more transitory or attenuated, such as wireline and casing crew workers, generally are covered under the Longshore Act. Others, whose work is on fixed platforms may find themselves covered either by the Longshore Act or by state workers' compensation, depending on the maritime nature of their work. This ability to predict the status of an offshore worker has benefitted the offshore worker by providing certainty as to his or her rights to recover damages for injury and it has assisted employers in the development of comprehensive indemnity and insurance allocation schemes, whereby each employer, to the extent possible, assumes responsibility to provide appropriate compensation to its own employees regardless of which employer may have been legally responsible for the injury.[6] To the extent the predictability of

6. An example of such a contractual indemnity/insurance arrangement can be found in the Liability and Insurance Articles of (Cont'd)

legal status of an offshore oil worker is reduced, the effectiveness of the existing approach to employee injury compensation is diminished. Such an outcome is undesirable.

D. The Adoption of the First Circuit Approach Would Adversely Affect this Stability and Predictability.

While the general approach of the Fifth Circuit is not without its flaws, it seems preferable to the consequences that appear likely to follow as a result of the application to the offshore oil industry of the more restrictive standard for Jones Act vessel status exemplified by the First Circuit's decision in *DiGiovanni v. Traylor Bros., Inc.*, 959 F.2d 1119 (CA1) (en banc), *cert denied*, 506 U.S. 827 (1992), and the case now before the Court. It appears that under the First Circuit approach, a mobile offshore drilling unit would be classified as a non-vessel work platform for Jones Act purposes while it was engaged in drilling operations, but that it would be considered a Jones Act vessel when in transit from one drilling site to another. As a result, the crew assigned to such a unit would move in and out of Jones Act and Longshore Act status depending on the activity of the vessel. Inevitably, questions would arise as whether a crew injury sustained while the unit was in transition between its drilling function and its transportation function should be treated as a claim under the Jones Act or the Longshore and Harbor Workers Compensation Act. Such a state of affairs would unduly complicate the management of personal injury claims by the Drilling Contractors and similarly situated members

(Cont'd)
the IADC Offshore Daywork Drilling Contract – US (Revised April 2003), a copy of which is attached at Appendix I. As used in the Contract, the "Operator" is the owner of the well and the "Contractor" is the drilling contractor.

of the IADC. Insurance coverage for claims arising out of the Longshore Act is generally provided by carriers other than those who provide Jones Act coverage. Claims brought under the Longshore Act are administered by an administrative agency of the Federal government, while the Jones Act is administered through the courts. As a result, the compensation available to injured offshore workers and the process for obtaining those benefits would differ depending on the activity of the mobile offshore drilling unit at the time of injury.

Inherent in the First Circuit approach is the possibility that while a mobile offshore drilling unit may not be a vessel for the purposes of the Jones Act while engaged in drilling operations, it would remain a vessel for the purposes of Section 905(b) of the Longshore Act. Thus, to the extent that an offshore worker is injured while the vessel is engaged in drilling operations, there would be possible exposure to tort liability under Section 905(b) of the Longshore Act in addition to the statutory obligation to pay LHWCA compensation benefits. While the responsibility of a vessel owner is fairly well developed by the cases in the stevedoring context, there is no comparable body of case law applicable to the offshore oil industry generally and a new period of uncertain development would have to be faced.

The notion that a special purpose watercraft can be classified as a vessel for one purpose and not for another is perhaps one of the most troublesome aspects of the restrictive approach of the First Circuit and the Circuits that follow its lead. To say that a special purpose watercraft can be a vessel for the purpose of not only the Longshore Act, but the Limitation of Liability Act and for regulation by the Coast Guard[7], and yet not be a vessel for the purposes of the Jones Act because the unit is stationary is neither logical or consistent.

7. *See* 46 CFR Subchapter 1-A

Finally, the adoption of the restrictive approach of the First Circuit would require the reevaluation of the contractual indemnity and risk allocation schemes that are in general use in the oil industry. In general, the offshore oil industry would undoubtedly experience a period of uncertainty while the new rules of the game could be worked out.

E. Any Standard for Determining Whether a Special Purpose Watercraft is a Jones Act Vessel Must Provide Stability and Predictability in the Offshore Drilling Context.

There is an old maxim frequently heard in the oil patch that seems particularly applicable to the present situation: "If it ain't broke, don't fix it." For virtually the last thirty-five years, a body of law has been developing, principally in the Fifth Circuit, that applies the Jones Act and the general maritime law to the special issues raised in the offshore oil industry. While that body of law is by nature incomplete and imperfect, it has proven to be workable and predictable. Moreover, it is accepted by both employers and employees alike as a framework within which to go about the task of providing compensation for offshore workers injured as a result of their work on mobile offshore drilling units. A redefinition of the standard for a Jones Act vessel will only introduce new problems, many of which cannot be foreseen today, without, at the same time, offering any significant improvement over the status quo.

While the offshore drilling contractors may find the present state of the law in the Fifth Circuit to be acceptable, it must be acknowledged that there is substantial conflict between the law as it stands in the Fifth Circuit and the law of several of the other Circuits. Clearly, a national standard

applicable to all types of special purpose watercraft must be adopted. We join with the Petitioner in suggesting that the Court focus initially on Section 3 of Title 1, U.S.C. which defines a vessel as "every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water" and a definition of a Jones Act seaman found by implication in Section 2 of the Longshore and Harbor Worker's Compensation Act, 33 U.S.C. § 902, as "a master or member of the crew of any vessel . . ." Relying on these statutory provisions and the analysis provided by cases such as *Robison* and *Manuel* from the Fifth Circuit, this Court should then fashion a uniform standard consistent with its earlier decisions in *Wilander* and *Chandris* for the determination of whether a special purpose watercraft is a vessel, not just for the purposes of the Jones Act, but for all purposes. Any suggestion that the legal status of such a watercraft can alternate between being a vessel and not being a vessel depending on its activity or use at a particular time should be rejected, so that a vessel would remain a vessel so long as it is engaged in one of its many intended functions.

IV. CONCLUSION

The Drilling Contractors and the IADC on behalf of all its offshore drilling contractor members, urge that the Court fashion a standard for the determination of whether a special purpose watercraft is a Jones Act vessel that leaves essentially unchanged the present status of mobile offshore drilling units as Jones Act vessels.

Respectfully submitted,

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APPENDIX I — LIABILITY AND INSURANCE ARTICLES OF THE IADC OFFSHORE DAYWORK DRILLING CONTRACT – US (REVISED APRIL 2003)

ARTICLE IX - LIABILITY

900. *General*

For the purposes of this Article IX, the terms "Affiliated Company", "Contractor's Items", Operator's Items", "Contractor's Personnel" and "Operator's Personnel" shall have the meanings as defined in Article I.

901. *Equipment or Property*

(a) Except as specifically provided herein to the contrary, Contractor shall at all times be responsible for and hold harmless and indemnify Operator from and against damage to or loss of Contractor's property, Contractor's Items, and the property, equipment, material and services of Contractor's Affiliated Companies, partnerships, and limited liability companies, and its and all of their co-owners; partners, co-venturers, joint owners, and its contractors and subcontractors of any tier and the officers, directors, employees, agents, assigns, representatives, managers, consultants, insurers and subrogees of each of the foregoing. Except to the extent that the proceeds from Contractor's insurance as made available to Contractor do not compensate Contractor therefor,

(1) Operator shall be responsible for and hold harmless and indemnify Contractor for loss or destruction of or damage to Contractor's drill pipe, drill collars, subs, reamers, bumper subs, stabilizers and other in-hole

Appendix I

equipment when such equipment is being used in the hole below the rotary table, normal wear excepted. Abnormal wear and/or damage for which Operator shall be responsible hereunder shall include, but not be limited to, wear and/or damage resulting from the presence ofH_2S or other corrosive elements in the hole including those introduced into the drilling fluid, excessive wear caused by sandcutting, damage resulting from excessive or uncontrolled pressures such as those encountered during testing, blowout, or in a well out of control, excessive deviation of the hole from vertical, dog-leg severity, fishing, cementing or testing operations, and from any unusual drilling practices employed at Operator's request. Operator's responsibility for such abnormal wear and/or damage as referred to herein shall include abnormal wear and/or damage to Contractor's choke hoses and manifolds, BOP and other appurtenant equipment. Operator shall pay the cost of repairing damaged equipment if repairable. In the case of equipment lost, destroyed or damaged beyond repair, Operator shall reimburse Contractor an amount equal to the then current replacement cost of such equipment delivered to the Drilling Unit.

(2) Operator shall be responsible for and hold harmless and indemnify Contractor for damage to or loss of Contractor's subsea and mooring equipment, including without limitation, chains, anchors, the riser, slip joint, choke and kill lines, flexible hoses, hydraulic hoses and guidelines, subsea BOP, shackles, pendant lines and buoys, and shall reimburse Contractor an amount equal to the then current replacement cost of such equipment delivered to the Drilling Unit, or the repair cost, whichever is applicable.

Appendix I

(3) Operator shall be responsible for and hold harmless and indemnify Contractor for loss or destruction of or damage, including corrosion and contamination, to Contractor's surface equipment resulting from the presence ofH_2S, $C0_2$ or other corrosive elements introduced into the drilling fluid (including elements introduced from the hole), or the presence of naturally occurring radioactive materials (NORM). Operator shall pay the cost of repairing andlor decontaminating damaged equipment if repairable. In the case of equipment lost, destroyed, damaged or contaminated beyond repair, Operator shall reimburse Contractor an amount equal to the then current replacement cost of such equipment delivered to the Drilling Unit. In addition, notwithstanding the provisions of Paragraph 706 of this Contract, the Standby Rate shall apply with respect to any downtime that may occur or result from such damage, including decontamination operations.

(4) Operator shall be responsible for and hold harmless and indemnify Contractor for damage to or loss of the Drilling Unit caused by Operator furnished helicopter, tugs, supply or service vessels.

(b) Contractor's operating practices require the BOP stack to be operated atone (1) degree or less from vertical to avoid abnormal wear and damage. In the event the stack angle exceeds one (1) degree from vertical, Operator shall be responsible for and hold harmless and indemnify Contractor for loss or damage to Contractor's subsea and in-hole equipment which may result. Operator shall pay the cost of repairing damaged equipment if repairable In the case of equipment lost, destroyed or damaged beyond repair,

Appendix 1

Operator shall reimburse Contractor an amount equal to the then current replacement cost of such equipment delivered to the Drilling Unit. In addition, notwithstanding the provisions of Paragraph 706 of this Contract, the Standby Rate shall apply with respect to the period of time required to repair or replace Contractor's subsea and in-hole equipment that may occur or result from such loss or damage.

(c) Operator shall at all times be responsible for and hold harmless and indemnify Contractor from and against damage to or loss of Operator's property, Operator's Items, and the property, equipment, material and services of Operator's Affiliated Companies, partnerships, and limited liability companies, and its and all of their co-owners, co-lessees, farmors, farmees, partners, co-venturers, joint owners, and its contractors and subcontractors of any tier (with the exception of Contractor and its subcontractors of any tier) and the officers, directors, employees, agents, assigns, representatives, managers, consultants, insurers and subrogees of each of the foregoing.

902. ***The Hole***

In the event the hole should be lost or damaged at any time, Operator shall, except as provided in Paragraph 705(f), be responsible for and hold harmless and indemnify Contractor and its suppliers, contractors and subcontractors of any tier from such damage to or loss of the hole, including all downhole property therein.

Appendix 1

903. ***Contractor's Personnel***

Contractor shall at all times be responsible for and hold harmless and indemnify Operator from and against all claims, demands and causes of action of every kind and character on account of bodily injury, illness or death of Contractor's Personnel or Contractor's invitees or damage to their property.

904. ***Operator's Personnel***

Operator shall at all times be responsible for and hold harmless and indemnify Contractor from and against all claims, demands, and causes of action of every kind and character on account of bodily injury, illness or death of Operator's Personnel or Operator's invitees or damage to their property.

905. ***Pollution and Contamination***

Notwithstanding anything to the contrary contained herein, the responsibility for pollution or contamination shall at all times be as follows:

(a) Contractor shall be responsible for and hold harmless and indemnify Operator for control and removal of pollution or contamination which originates above the surface of the water from spills of fuels, lubricants, motor oils, normal water base drilling fluid and attendant cuttings, pipe dope, paints, solvents, ballast, bilge and garbage wholly in Contractor's possession and control and directly associated with Contractor's equipment and facilities. For purposes hereof

the term "normal water base drilling fluid" means drilling fluid which does not exceed toxicity limits specified for offshore discharges by the environmental protection entity having jurisdiction over the Operating Area.

(b) Operator shall be responsible for and hold harmless and indemnify Contractor and its suppliers, contractors and subcontractors of any tier against all claims, demands, and causes of action of every kind and character (including control and removal of the pollutant involved) arising directly or indirectly from all pollution or contamination (including radioactive contamination), other than that described in Paragraph 905(a) above, which may occur including, but not limited to, that which may result from fire, blowout, cratering, seepage or any other uncontrolled flow of oil, gas, water or other substance, as well as the use of or disposition of radioactive sources, lost circulation and fish recovery materials and fluids, oil emulsion, oil base or chemically treated drilling fluids and attendant cuttings, and drilling fluids other than "normal water base drilling fluid" defined in Paragraph 905(a) above.

(c) In the event a third party commits an act or omission which results in pollution or contamination for which either Contractor or Operator for whom such party is performing work is held to be legally liable, the responsibility therefor shall be considered, as between Contractor and Operator, to be the same as if the party for whom the work was performed had performed the same and all of the obligations and limitations set forth in Paragraphs 905(a) and (b) above, shall be specifically applied.

906. *Debris Removal and Cost of Control*

Operator shall at all times be responsible for and hold harmless and indemnify Contractor for the cost of removal of debris (including Contractor's Items) to the extent that proceeds from Contractor's insurance as made available to Contractor do not compensate Contractor therefor. Operator shall at all times be responsible for and hold harmless and indemnify Contractor for the cost of regaining control of any wild well.

907. *Underground Damage*

Operator shall at all times be responsible for and hold harmless and indemnify Contractor and its suppliers, contractors and subcontractors of any tier from and against any and all claims on account of injury to, destruction of, or loss or impairment of any property right in or to oil, gas or other mineral substance or water, if at the time of the act or omission causing such injury, destruction, loss, or impairment, said substance had not been reduced to physical possession above the seabed, and for any loss or damage to any formation, strata, or reservoir beneath the seabed.

908. *Patent Liability*

Contractor shall at all times be responsible for and hold harmless and indemnify Operator from and against any and all loss or liability arising from infringement of patents of the United States covering equipment furnished by Contractor. Operator shall at all times be responsible for and hold harmless and indemnify Contractor from and against

any and all loss or liability arising from infringement or alleged infringements of patents covering the property, equipment, methods or processes furnished or directed by Operator.

909. *Consequential Damages*

Subject to and without affecting the provisions of this Contract regarding the payment rights and obligations of the parties or the risk of loss, release and indemnity rights and obligations of the parties, each party shall at all times be responsible for and hold harmless and indemnify the other party from and against its own special, indirect or consequential damages, and the parties agree that special, indirect or consequential damages shall be deemed to include, without limitation, the following: loss of profit or revenue; costs and expenses resulting form business interruptions, loss of or delay in production; loss of or damage to the leasehold; loss of or delay in drilling or operating rights; cost of or loss of use of property, equipment, materials and services, including without limitation those provided by contractors or subcontractors of every tier or by third parties.

Operator shall at all times be responsible for and hold harmless and indemnify Contractor from and against all claims, demands and causes of action of every kind and character in connection with such special, indirect or consequential damages suffered by Operator's co-owners, co-venturers, co-lessees, farmors, farmees, partners and joint owners.

910. *Termination of Location Liability*

Notwithstanding any other provisions of this Contract, once the Drilling Unit is under way from the well location, Operator shall be responsible for and hold harmless and indemnify Contractor for loss or damage to property, personal injury or death of any person which occurs thereafter as a result of the condition of the well or the location and Contractor shall be relieved of such liability.

911. *Indemnity Obligation*

(a) The parties intend and agree that the phrase "be responsible for and hold harmless and indemnify" in Paragraphs 605, 606, 805 and 901 through 910 hereof means that the indemnifying party shall release, indemnify, hold harmless and defend (including payment of reasonable attorney's fees and costs of litigation) the indemnified party from and against any and all claims, demands, causes of action, damages, judgments and awards of any kind or character, without limit and without regard to the cause or causes thereof, including claims, demands, and causes of action arising out of operation of any vessel or vessels (including the Drilling Unit), including ingress and egress to the well location, and loading and unloading of personnel and cargo, and also including preexisting conditions, defect or ruin of premises or equipment (whether such conditions, defect or ruin be patent or latent), the unseaworthiness of any vessel or vessels (including the Drilling Unit), breach of representation or warranty (express or implied), breach of duty (whether statutory, contractual or otherwise), strict liability, any theory of tort, breach of contract, fault,

regulatory or statutory liability, products liability, the negligence of any degree or character (whether such negligence be sole, joint or concurrent, active, passive or gross) of any person or persons, including such negligence of the party seeking the benefit of a release, indemnity or assumption of liability, or any other theory of legal liability.

(b) An indemnifying party's obligations contained in this Contract shall extend to the indemnified party and shall inure to the benefit of such party, its Affiliated Companies, and their co-owners, co-venturers, co-lessees, farmors, farmees, and joint owners, and the officers, directors, stockholders, partners, managers, representatives, employees, consultants, agents, servants and insurers of each, and to actions against the Drilling Unit, its legal and beneficial owners, whether in rem or in personam.

(c) Except as otherwise provided herein, the terms and provisions of Paragraphs 605, 606, 805 and 901 through 910 shall have no application to claims or causes of action asserted against Operator or Contractor which arise solely by reason of any agreement of indemnity with a person or entity not a party hereto. Except as otherwise provided herein, nothing contained herein shall confer any rights upon any third party beneficiary.

912. *General Intent.*

The parties recognize that the performance of well drilling, workover and associated activities such as those to be performed under this Contract have resulted in bodily injury, death, damage or loss of property, well loss or damage,

pollution, loss of well control, reservoir damage and other losses and liabilities. It is the intention of the parties hereto that the provisions of this Article IX and Paragraphs 605, 606 and 805 shall exclusively govern the allocation of risks and liabilities of said parties without regard to cause (as more particularly specified in Paragraph 911), it being acknowledged that the compensation payable to Contractor as specified herein has been based upon the express understanding that risks and liabilities shall be determined in accordance with the provisions of this Contract.

ARTICLE X - INSURANCE

1001. *Insurance*

Contractor shall carry and maintain, or cause to be carried and maintained, insurance coverages of the type and in the amounts set forth in Appendix E, covering only those liabilities specifically assumed by Contractor under this Contract.

All references in this Contract to "insurance" of Contractor shall mean such insurance as set forth in Appendix E. Contractor shall have the right to self-insure any or all of that portion of insurance relating to loss or damage to Contractor's Items.

Operator shall carry and maintain, or cause to be carried and maintained, the insurance coverages of the types and amounts set forth in Appendix F, covering only those liabilities specifically assumed by Operator under this Contract.

Appendix I

All references in this Contract to "insurance" of Operator shall mean such insurance as set forth in Appendix F. Operator shall have the right to self-insure any or all of that portion of insurance relating to loss or damage to Operator's Items.

1002. *Certificates*

Each party will furnish the other, on request, certificates indicating that the required insurance is in full force and effect and that the same shall not be canceled or materially and adversely changed without ten (10) days prior written notice to the other party.

1003. *Subrogation*

For liabilities assumed hereunder by Contractor, its insurance shall be endorsed to provide that the underwriters waive their right of subrogation against Operator, its Affiliated Companies and their co-owners, co-venturers, co-lessees, farmors, farmees, and joint owners and the officers, directors, stockholders, partners, managers, representatives, employees, consultants, agents, servants and insurers of each. Operator will, as well, cause its insurer to waive subrogation against Contractor and Contractor's Affiliated Companies and their co-owners, and the officers, directors, stockholders, partners, managers, representatives, employees, consultants, agents, servants and insurers of each for liabilities it assumes.

Appendix I

1004. *Additional Insured*

Contractor shall name Operator as additional insured, where permitted, under its policies of insurance, but only with respect to and to the extent of the liabilities specifically assumed by Contractor under this Contract. Operator shall name Contractor as additional insured, where permitted, under its policies of insurance, but only with respect to and to the extent of the liabilities specifically assumed by Operator under this Contract.

Appendix I

APPENDIX E

CONTRACTOR'S INSURANCE

I. *Workers' Compensation and Employer's Liability*

A. Workers' Compensation insurance to comply fully with the provisions and applicable laws of the country or state in which the Contractor qualifies as an employer and in which operations hereunder are performed, including U.S. Longshore & Harbor Workers Act and Outer Continental Shelf Lands Act coverage, if applicable.

B. Employer's Liability with limits of:

Bodily Injury by Accident	-	$1,000,000 each accident
Bodily Injury by Disease	-	$1,000,000 policy limit
Bodily Injury by Disease	-	$1,000, 000 each employee

C. Maritime Employer's Liability including Jones Act and Death on the High Seas Act coverage and transportation, wages, maintenance and cure with limits of $1,000,000 each person/$1,000,000 each accident.

D. "In rem" endorsement.

E. Borrowed Servant/Alternate Employer endorsement.

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II. *Comprehensive General Liability Insurance*

A. Commercial General Liability, Protective Liability including coverage for premises/operations, contractor's protective liability, contractual liability and products/ completed operations coverage and subject to a $1,000,000 combined single limit of liability each occurrence for Bodily Injury and Property Damage.

B. Charterer's Legal Liability.

C. Deletion of watercraft exclusion as respects operations and contractual liability for watercraft exposure not covered by Protection and Indemnity policy.

D. "In Rem" endorsement.

III. *Automobile Liability Insurance*

Standard comprehensive form including all owned, hired and non-owned vehicles with a $1,000,000 combined single limit of liability each accident for bodily injury and/or property damage.

IV. *Aircraft Liability*

Aircraft liability including contractual liability covering all owned (if any) hired and non-owned aircraft (fixed wing and rotary) including passenger liability with a $5,000,000 combined single limit of liability each accident for bodily injury and/or property damage.

Appendix I

V. *Excess/Umbrella Liability Insurance*

1. Providing following form coverage for Employer's Liability, Maritime Employer's Liability Commercial General Liability, Automobile Liability, Aircraft Liability, and Vessel Liabilities.

2. Limit of Liability: $_____ combined single limit of liability each occurrence for bodily injury and/or property damage.

VI. *Marine Insurance*

1. Hull and Machinery Insurance (including collision liability) shall be provided for the Drilling Unit owned or chartered by Contractor and utilized in the performance of this Contract in an amount equal to the declared value of the Drilling Unit, subject to a deductible determined by Contractor.

2. Protection and Indemnity Insurance or equivalent comprehensive general liability insurance, with watercraft exclusion deleted, shall be provided with a combined single limit of U.S. $_____ per occurrence or the value of the Drilling Unit, whichever is greater.

Appendix I

VII. *No Recourse of Premium*

All policies of insurance shall be endorsed to delete any recourse of premium, club calls, assessments or advances against Operator, Operator's Affiliated Companies, partnerships, and limited liability companies, and its and all of their co-owners, partners, co-venturers, and joint owners.

VIII. *Deductibles*

Except as otherwise provided deductibles shall be for the account of Contractor.

Appendix I

APPENDIX F

OPERATOR'S INSURANCE

I. *Workers' Compensation/Employer's Liability*

A. Workers' Compensation insurance to comply fully with the provisions and applicable laws of the country or state in which the Operator qualifies as an employer and in which operations hereunder are performed, including U.S. Longshore & Harbor Workers Act and Outer Continental Shelf Lands Act coverage, if applicable

B. Employer's Liability with limits of:

Bodily Injury by Accident	-	$1,000,000 each accident
Bodily Injury by Disease	-	$1,000,000 policy limit
Bodily Injury by Disease	-	$1,000, 000 each employee

C. Maritime Employer's Liability including Jones Act and Death on the High Seas Act coverage and transportation, wages, maintenance and cure with limits of $1,000,000 each person/$1,000,000 each accident.

D. "In rem" endorsement.

E. Borrowed Service/Alternate Employer endorsement.

Appendix I

II. *Commercial General Liability Insurance*

A. Commercial General Liability including coverage for premises/operations, contractor's protective liability, contractual liability and products/completed operations coverage and subject to a $1,000,000 combined single limit of liability each occurrence for Bodily Injury and Property Damage.

B. Underground Resource/Equipment Coverage.

C. Charterer's Legal Liability.

D. Deletion of watercraft exclusion as respects operations and contractual liability for watercraft exposure not covered by Protection and Indemnity policy.

E. "In Rem" endorsement.

III. *Automobile Liability Insurance*

Standard comprehensive form including all owned, hired and non-owned vehicles with a $1,000,000 combined single limit of liability each accident for bodily injury and/or property damage.

IV. *Aircraft Liability*

Aircraft liability including contractual liability covering all owned (if any) hired and non-owned aircraft (fixed wing and rotary) including passenger liability with a $5,000,000 combined single limit of liability each accident for bodily injury and/or property damage.

Appendix I

V. *Excess/Umbrella Liability Insurance*

1. Providing following form coverage for Employer's Liability, Maritime Employer's Liability Commercial General Liability, Automobile Liability, Aircraft Liability, and Vessel Liabilities.

2. Limit of Liability: $_____ combined single limit of liability each occurrence for bodily injury and/or property damage.

VI. *"All Risk" Insurance*

"All Risk" Insurance, subject to a nominal deductible, covering physical loss or damage (including wreck/debris removal) to all Operator's Items and other property of Operator.

VII. *Operator's Extra Expense Insurance*

Operator's Extra Expense Insurance in the amount of not less than U.S. $_____ combined single limit per occurrence to cover any and all sums which Operator and/or Contractor may be obligated to incur as expenses and/or liabilities which may be incurred on account of bringing under control an oil or gas well which is out of control or extinguishing an oil or gas well fire, redrilling or repair of loss or damage to an oil or gas well, seepage and pollution, cleanup and contamination arising from operations under this Contract.

Appendix I

VIII. *No Recourse of Premium*

All policies of insurance shall be endorsed to delete any recourse of premium, club calls, assessments or advances against any member of Contractor, and its Affiliated Companies, partnerships and limited liability companies.

IX. *Deductibles*

Except as otherwise provided deductibles shall be for the account of Operator.

X. *Operator's Certificate of Financial Responsibility*

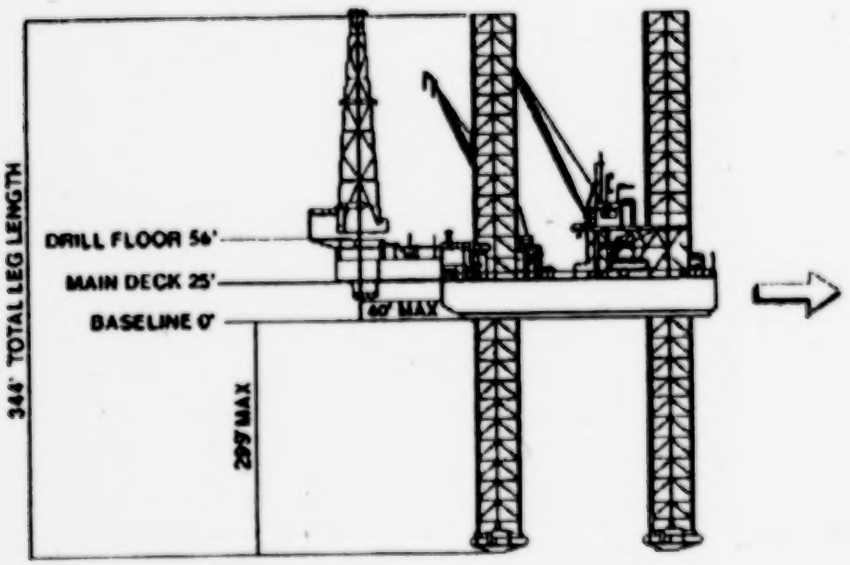
Operator shall provide a Certificate of Financial Responsibility in compliance with the Oil Pollution Act of 1990, as applicable, for operations in U.S. waters and shall provide a copy to Contractor.

XI. *Scope*

The above specified amounts and types of insurance coverage shall not be deemed to constitute, or be construed as, a limitation on Operator's liability under the Contract.

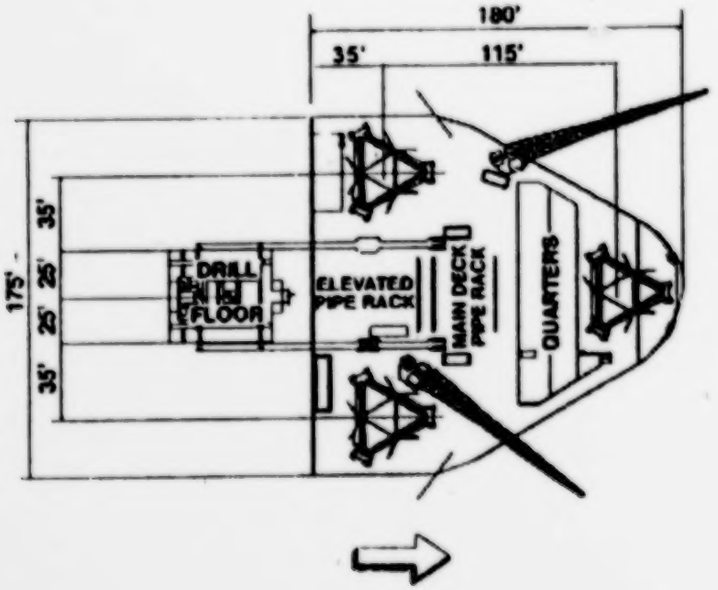
APPENDIX II — DIAGRAMS SHOWING CONFIGURATION OF A JACK UP, A SEMI-SUBMERSIBLE AND A DRILL SHIP

JACK UP



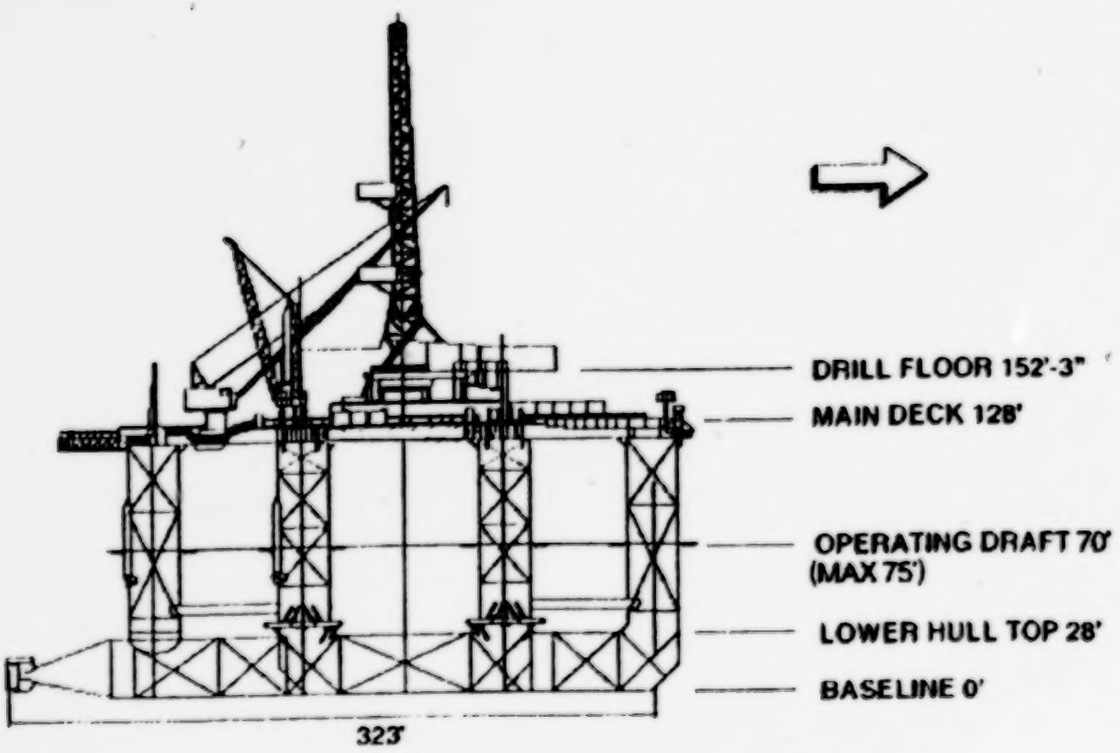
Top View

Specifications Page



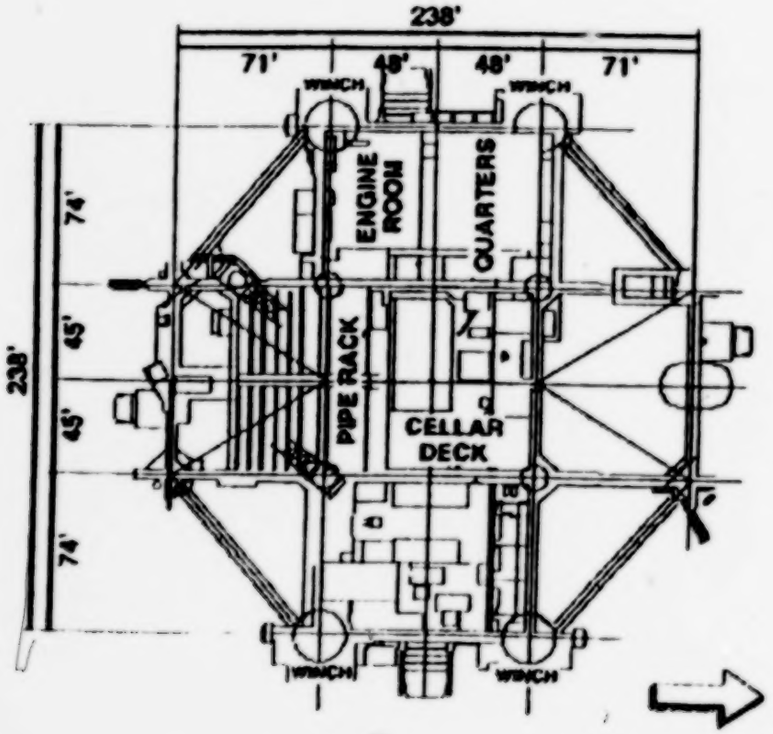
Appendix II

SEMI-SUBMERSIBLE



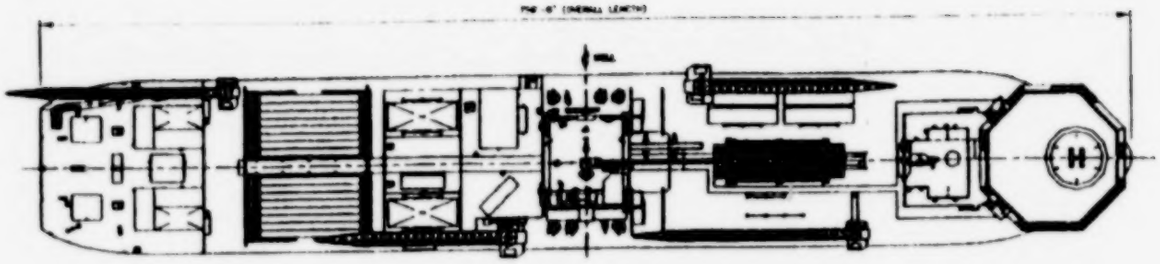
Top View

Specifications Page

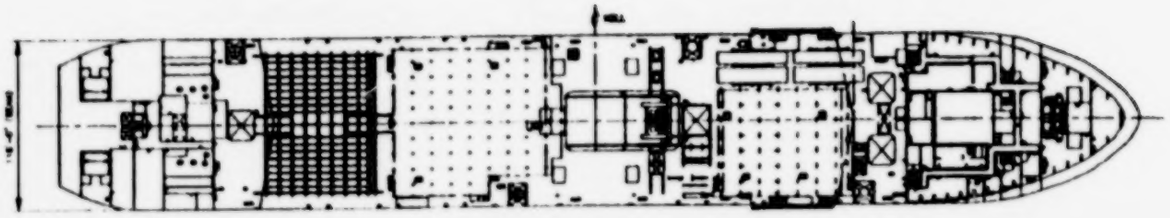


Appendix II

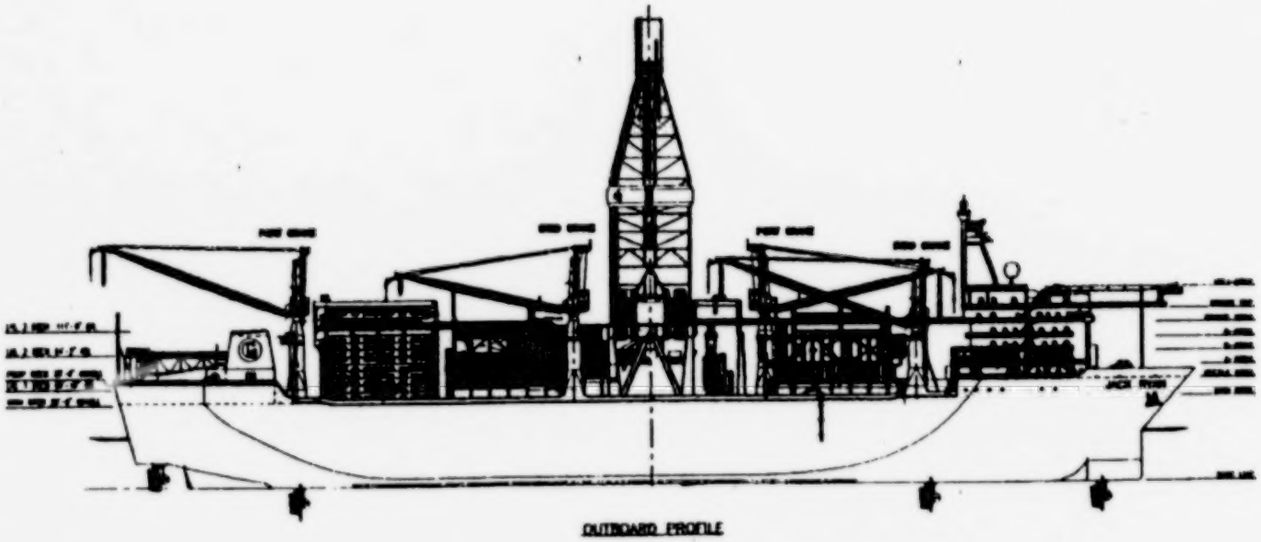
DRILL SHIP



PLAN VIEW



MAIN DECK



OUTBOARD PROFILE

BEST AVAILABLE COPY